

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>BUERGOFOL GMBH,</p> <p style="text-align: center;">Plaintiff and</p> <p style="text-align: center;">Counter Defendant,</p> <p style="text-align: center;">vs.</p> <p>OMEGA LINER COMPANY, INC.,</p> <p style="text-align: center;">Defendant and</p> <p style="text-align: center;">Counter Claimant.</p>	<p style="text-align: right;">4:22-CV-04112-KES</p> <p style="text-align: center;">MOTION TO STRIKE BUERGOFOL’S SUR-SURREPLY IN SUPPORT OF MOTION TO COMPEL OMEGA TO ANSWER BUERGOFOL’S INTERROGATORY 12 (DKT. 531)</p>
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Defendant and Counterclaimant Omega Liner Company, Inc. (“Omega”), by and through its undersigned attorneys of record, and pursuant to Federal Rule of Civil Procedure 12(f)(2) and Local Rule 7.1, moves this Court for an order striking Buergofol’s Reply to Omega’s Surreply to Motion to Compel Omega to Answer Buergofol’s Interrogatory No. 12 (“Sur-Surreply”).

On August 12, 2024, Plaintiff and Counter Defendant Buergofol GmbH (“Buergofol”) filed its motion to compel, moving this Court for an order compelling Omega “to provide a full and complete narrative answer to Buergofol’s Interrogatory No. 12.” (Dkt. 444.) On September 10, 2024, Omega filed its brief in opposition to Buergofol’s motion to compel regarding Interrogatory No. 12. (Dkt. 477.) On September 24, 2024, Buergofol filed its reply brief in support of its motion to compel regarding Interrogatory No. 12. (Dkt. 498.) Because Buergofol brought forward new arguments and new complaints about Omega’s Third

Supplemental Response to Interrogatory No. 12 in its reply brief in support of its motion to compel, Omega sought leave to file a surreply brief in opposition to the motion and attached a copy of its proposed surreply brief to its motion. (Dkt. 506.) This Court granted Omega leave to file its surreply brief (Dkt. 509), and Omega did so (Dkt. 510). Importantly, this Court's order granting Omega leave to file a surreply brief did not afford Buergofol leave to submit additional briefing regarding its motion to compel. (Dkt. 509.)

Local Rule 7.1 governs the briefing of motions before this Court. That Rule provides that each motion is to be accompanied by a written brief, that a responsive brief may be filed by the opposing parties within 21 calendar days after service of a motion and brief, and that the movant may then file a reply brief within 14 days after service of the responsive brief. L.R. 7.1. The Rule makes no mention of surreply briefs, meaning that leave of this Court is required. *Atuahene v. South Dakota State University*, 2009 WL 1586952, at *8 (D. S.D. June 4, 2009) (stating that “[t]he local rules do not contemplate surreplies to civil motions as a matter of right. . . ,” but recognizing that “parties may petition the court for permission to submit a surreply”) (citing *Kanvick v. City of Reno*, 2008 WL 873085, at *1 n. 1 (D. Nev. Mar. 27, 2008) (stating that neither the local rules nor the Federal Rules of Civil Procedure “provide for second oppositions . . . as a matter of right”)).

Buergofol's Sur-Surreply is an improper pleading. As noted, this pleading is not contemplated by this Court's Local Rules, this Court's prior order did not afford Buergofol leave to file an additional brief in support of its motion to compel regarding Interrogatory No. 12, and Buergofol did not seek such leave from this Court before filing this brief. Accordingly, Buergofol's Sur-Surreply (Dkt. 531) is redundant and immaterial, and Omega's motion to strike it should therefore be granted.

Dated this 30th day of October, 2024.

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